

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Nawaz Ahmed, :
Petitioner : Civil Action 2:08-cv-00493
v. : Judge Marbley
David Bobby, Warden : Magistrate Judge Abel
Respondent :
:

Report and Recommendation

Petitioner Nawaz Ahmed, a state prisoner, brings this action under 28 U.S.C. §2254 for a petition for writ of habeas corpus challenging his February 2001 Belmont County conviction for capital murder and sentence of death. This matter is before the Magistrate Judge for preliminary consideration under Rule 4, Rules Governing Section 2254 Cases in the United States District Courts.

This is a successive habeas corpus petition. Ahmed filed a habeas corpus action July 11, 2007. *Nawaz Ahmed v. Marc C. Houk*, 2:08-cv-658 (MHW/NMK). In conformity with the Court's September 28, 2007 scheduling order, his petition for writ of habeas corpus in that action was filed May 14, 2008. Ahmed has filed this second, successive petition for writ of habeas corpus to circumvent rulings in Case No. 2:07-cv-658 denying his repeated motions that S. Adele Shank be appointed a third attorney to represent him. Because Ahmed repeatedly filed motions in Case No. 2:07-cv-658, the Court ultimately ordered the Clerk of Court not to accept and file any further pleadings or other papers from him because he is represented by counsel. *Nawaz Ahmed v. Marc C. Houk*, 2:08-cv-658

(April 16, 2008 Order, doc. 32). To get around that ruling, Ahmed filed this second, successive habeas corpus petition challenging his February 2001 Belmont County conviction for capital murder and sentence of death.

Under the procedures adopted in *In re Jonathan Sims*, 111 F.3d 45, 47 (6th Cir. 1997), I RECOMMEND that this be TRANSFERRED to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1631. Alternatively, I RECOMMEND that this case be CONSOLIDATED with *Nawaz Ahmed v. Marc C. Houk*, 2:08-cv-658 and that the petition here then be STRICKEN as filed in violation of the Court's April 16, 2008 Order. *Nawaz Ahmed v. Marc C. Houk*, 2:08-cv-658 (April 16, 2008 Order, doc. 32).

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. See 28 U.S.C. §636(b)(1)(B); Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Mark R. Abel
United States Magistrate Judge